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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appeal No. 2023-001845
Case No. 2022-CP-25-00269

Daniel A. Speights,

Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company; Auto-Owners Insurance Company; and Bankers Standard Insurance Company,

Respondents.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Respondent Auto-Owners brief reveals that the lower court's ruling cannot be supported by South Carolina law and supporting the same necessitates ignoring multiple factual issues. Despite attempts to frame the lens to avoid material issues of fact, it remains uncontroverted that an invoice addressed to the insured was received by the insured through the communication systems of the insured, and in the normal course of business was paid by the owner of the insured. It cannot be disputed that the effective policy purports to cover theft of any kind, fraud, and forgery. It cannot be disputed that the representative of Auto-Owners conceded that these coverages could apply to the situation. Finally, it cannot be disputed that South Carolina has not addressed the legal propriety of limiting coverage through this particular exclusion. The issues raised at the initial argument are the issues now before this Court and the proper result is to reverse the lower court's ruling because there are material issues of fact left unresolved.

ARGUMENT

I. RESPONDENT'S CLAIM THAT ISSUES WERE FIRST RAISED IN A MOTION TO RECONSIDER IS INCORRECT, AND EVEN IF CORRECT, THE LOWER COURT'S RULING IS STILL INCORRECT.

The initial hearing of this matter was conducted by video conference on September 25, 2023. A review of the hearing transcript of the initial argument plainly shows:

1. Speights opened and closed his opposition to the Motion for Summary Judgment by arguing it was inappropriate because discovery was ongoing and the relevant facts which could bear on the claim were not yet established.
2. Speights next pointed out immediately that the issue presented was both factually novel (this was the first time Auto-Owners had excluded a claim based on the voluntary parting language) and legally novel (the Courts in South Carolina had not assessed the application

of such an exclusion and that first time should be done on a full record).

3. Speights argued that the distinction between the firm and Speights, the standing of the two were blurred and created issues of material fact that were best answered by a jury.
4. Speights cited multiple quotes from the deposition taken of Auto-Owners representative taken only days prior in which the representative conceded certain coverages could apply.
5. Speights cited contradictions in the policy language that created ambiguity concerning coverage that should be construed in favor of the insured. [Transcript of Hearing].

Despite Respondent's attempt to narrow this Court's review, all issues were raised in the first instance. Because the hearing was conducted by video conference, the very next day Speights counsel mailed hard copies to the Court and opposing counsel a number of documents referenced in argument that would have been simply passed up in person as well as a summary of argument. [Opposition to Motion for Summary Judgment]. Included in the documents were an entire copy of the policy (the policy submitted by Auto-Owners was only a partial copy), the deposition transcript that was cited in argument, the emails referenced in argument, and the invoice referenced in argument.

Although the Court did not receive the hard copy prior to an emailed indication of which way it intended to rule and instructions to opposing counsel to draft an Order, the documents were received by opposing counsel and the Court prior to the Order being made final and effective by being filed.

Following the filing of the Court's Order, which was written more expansively than the argument, Speights filed a Motion to Reconsider in which he restated and reissued all of the arguments he had just raised to the Court. [Motion to Reconsider]. To exemplify the harm done by granting summary judgment in the midst of discovery (as he had already raised twice in the

initial argument) Speights submitted his own affidavit which detailed issues already raised. [Affidavit].

Speights argued his points and then asked the Court to reconsider its position, doing exactly as our rules encourage, affording a lower court an opportunity to review and decide an issue before bringing an appeal. The constriction promoted by Auto-Owners goes well beyond and distorts this principle. The Respondent argues that this Court is not allowed to look at a dictionary in evaluating a policy term to discern the logical incongruity recognized by other Courts. The issues were presented to the lower court but were ignored by the lower court.

II. RESPONDENT SETS UP A STRAW MAN TO SUPPORT THE LOWER COURT'S RULING.

Speights has never asserted that a policy issued to a law firm he owns must necessarily cover his personal assets for merely personal losses. Auto-Owners attempts to package Speights argument as an assertion without basis for that proposition. It is not.

Speights' position has been consistent. The invoice that triggered this entire loss was sent to the firm, was addressed to the firm, was received by the firm's bookkeeper, who followed firm protocol to address bills of the firm. This creates at least an issue of material fact as to whether the firm's policy should and would cover the loss. *Rowell v. Fireman's Insurance Co.*, 142 S.C. 457, 461 (S.C. 1927) ("If more than one inference can be drawn from the testimony, a question of fact is made for the jury.")

III. RESPONDENT CANNOT AVOID THE CONFLICTS AND AMBIGUITIES CREATED BY THE VOLUNTARY PARTING LANGUAGE

As Speights detailed in his initial brief, the language chosen in the exclusion flatly contradicts other portions of the policy and is unclear in meaning even when simply interpreting the clause in a vacuum. Court's increasingly limit the clause and its application so that an insured

is not surprised by a trap door removing the basic understandings of the responsibility of an insurer. See *CIM, LLC v. Series Protected Cell 1, A Series of Oxford Ins. Co. TN, LLC*, 3:23-cv-00479, at *3 (M.D. Tenn. Oct. 27, 2023) ("Put another way, fraud necessarily involves a voluntary parting of property and the crime provision provides coverage for actions by a "third party" that involves "takings accomplished by... electronic funds transfer fraud.").

The additional provisions found in this policy are in conflict with the expansive use of the voluntary parting exclusion, and those other provisions have traditionally been interpreted to mean a broad array of covered activities, including what is being termed a voluntary parting in this instance. As Judge Posner noted in *McClellan v. Cantrell* , 217 F.3d 890, 893 (7th Cir. 2000) (quoting *Stapleton v. Holt* , 207 Okla. 443, 250 P.2d 451, 453-54 (1952):

> Fraud is a generic term, which embraces all the multifarious means which human ingenuity can devise and which are resorted to by one individual to gain an advantage over another by false suggestions or by the suppression of truth. No definite and invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.

The Respondent attempts to avoid these contradictions and ambiguities by continually leaning on the straw man as if there are not material issues and inferences of fact concerning the nature of the loss. The circular support for the lower court's ruling falls in on itself when one acknowledges that there are issues of fact as to whether the payment made on behalf of the insured is covered.

CONCLUSION

Respondent's brief underscores the inappropriate basis for the lower court's ruling. For all of the foregoing reasons, this court should reverse.

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE
COUNTY OF HAMPTON)

RE: Daniel A. Speights vs. Chubb Limited d/b/a Chubb National Insurance Company; Auto-Owners Insurance Company; and Bankers Standard Insurance Company
(Appeal No. 2023-001845 /Case No. 2022-CVP-25-00269)

PERSONALLY APPEARED before me, Susan T. Murdaugh, who being duly sworn, deposes and says: that she is employed in the office of Speights & Solomons, LLC, attorneys for the Appellant in the above-referenced action; that she served the foregoing Reply Brief of Appellant this 15th day of April, 2024, via electronic email to the attorney(s) listed below:

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Susan T. Murdaugh
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SWORN TO before me this 15
day of April, 2024

Rosemarie Lightsey (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/15/2028

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VIA EMAIL (ctappfilings@scourts.org)

The Honorable Jenny Abbott Kitchings
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Re: Daniel A. Speights v. Chubb Limited, etc., et al.
Appeal No. 2023-001845 (2022-CP-25-00269)

Dear Ms. Kitchings:

Attached for electronic filing and service in the above-referenced matter is Appellant's Reply Brief in the above-referenced matter. By copy of this letter, I am serving all counsel of record as stated below.

With kind regards, I am

Sincerely yours,

Susan T. Murdaugh
Paralegal

stm
Enclosures
cc: Morgan S. Templeton, Esquire (w/enc) (via email)
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